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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/120,422	07/22/98	SANTELLI	A 4297-104US

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EXAMINER

MAH, C

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 06/25/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/120,422

Applicant(s)
Santelli Jr

Examiner
Chuck Mah

Group Art Unit
3626



☒ Responsive to communication(s) filed on May 17, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-11 is/are pending in the application.

Of the above, claim(s) 11 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-10 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Newly submitted claim 11 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the process of forming a unitary extrusion as claimed can be used to make other and materially different product such as containers, kitchen utensils, and wall panel structure.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 11 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4-6 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Francis Jr. et al. '132.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Francis Jr. et al '132.

'132 discloses the claimed invention except for reversing the tongue and groove. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the tongue on the rigid section and the groove in the flexible section, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

6. Claims 1-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiese '955 in view of Green '392.

'955 discloses the invention as claimed but for the material forming the flexible section. '392 teaches a hinge (4) made of thermoplastic rubber and recognizes that the thermoplastic rubber can stay flexible and resists cracking even at a temperature as low as -40°C. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use thermoplastic rubber as taught by '392 to substitute polypropylene or polyethylene of '955 to make the flexible section, thereby to take the advantage of the above-mentioned superior characteristics of thermoplastic rubber over thermoplastics.

7. Applicant's arguments filed May 17, 1999 have been fully considered but they are not persuasive.

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'132 clearly shows a unitary hinge that has rigid sections 21 and 22 united by a flexible section 23. '955 shows a hinge having rigid sections (40) united by a flexible section (32). All sections are formed by extrusion.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Mah whose telephone number is (703) 308-0676. The examiner can normally be reached on Monday-Thursday from 8:30 AM to 6:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight, can be reached on (703) 308-3179. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597(8).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Chuck Mah

Primary Examiner

CM

June 23, 1999